

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HERIBERTO TORIBIO-RUIZ,)	3:18-CV-0493-RCJ-CLB
)	
Plaintiff,)	<u>MINUTE ORDER</u>
)	
vs.)	July 23, 2020
)	
ROMEO ARANAS, et al.,)	
)	
Defendant.)	
_____)	

PRESENT: THE HONORABLE CARLA BALDWIN, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: LISA MANN REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

Two motions are currently pending. The court will address each motion in turn.

ECF No. 28 – Motion to Substitute Michael Minev

Plaintiff filed a motion which is entitled, “Motion to Substitute Michael Minev as NDOC Medical Director.” (ECF No. 28). However, in the body of the motion, plaintiff requests that Michael Minev be “added as a party not substituted for Aranas due to Aranas having personal participation” (ECF No. 28, pg. 3). No opposition to this motion was filed.

Plaintiff’s motion to substitute should have been filed as a motion to amend pursuant to Fed.R.Civ.P. 15 because plaintiff is attempting to add – not substitute - a party to this lawsuit. Therefore, the court must **DENY** plaintiff’s motion to substitute (ECF No. 28).

In this instance, the proper procedure to add Michael Minev as a party to this litigation requires plaintiff to file a motion to amend his complaint coupled with the proposed amended complaint. However, pursuant to the scheduling order (ECF No. 24), the deadline to file motions for leave to amend expired on Friday, May 22, 2020. Plaintiff sought and received an extension of discovery until August 24, 2020 but did not receive an extension of time to file amendments.

However, because plaintiff, who is representing himself *pro se*, attempted to add Michael Minev as a party but unfortunately used the incorrect procedural mechanism, the court will grant Plaintiff a short extension of time, specifically 14 days, to file a proper

motion to amend accompanied by a proposed amended complaint, if chooses to do so. Therefore, plaintiff must file his motion to amend, which must be accompanied by a proposed amended complaint pursuant to LR 15-1, by no later than **Tuesday, August 6, 2020.**¹

ECF No. 29 – Motion for Entry of Default

Before the court is plaintiff's motion for entry of Clerk's Default as to Dana Marks (ECF No. 29). Dana Marks was properly served by the U.S. Marshal on February 20, 2020 (ECF No. 19). Therefore, an answer was due from Dana Marks on Friday, March 13, 2020. Immediately following the motion for entry of default, Dana Marks filed a joinder to the answer on July 13, 2020, more than four months late. Dana Marks failed to request any extension of time from this court to file an answer or other response either before or after the joinder was filed.

There is no question that Dana Marks is extremely untimely in filing an answer. Moreover, defendant and defendant's counsel has failed to show good cause for the lack of diligence or request for leave from the court to file a belated document. Although such failures could be fatal to a defense, this court finds that where possible, cases and motions should ordinarily be resolved on their merits -- not based on technical rule violations or errors. Therefore, the court will **DENY** plaintiff's motion for entry of default (ECF 29).

IT IS SO ORDERED.

DEBRA K. KEMPI, CLERK

By: /s/
Deputy Clerk

¹ The court notes that Plaintiff appears to be under the impression that he must add Michael Minev as a party to this litigation in order to review his medical file. This is incorrect. Plaintiff may kite to review his medical file following NDOC's standard Administrative Procedure.